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07                   UNITED STATES DISTRICT COURT  
08                   WESTERN DISTRICT OF WASHINGTON  
09                   AT SEATTLE

10 MICHAEL JOHN JONES,                                   ) CASE NO. C05-0787-JCC  
11                         Plaintiff,                           ) )  
12 MUNICIPAL COURT OF                                   ) REPORT AND RECOMMENDATION  
13 MOUNT VERNON, et al.,                           ) )  
14                         Defendants.                           ) )  
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15                   Plaintiff is a Washington state prisoner who has submitted a *pro se* civil rights complaint  
16 pursuant to 42 U.S.C § 1983, along with an application for leave to proceed *in forma pauperis*.  
17 (Dkt. #1). For the reasons set forth below, the court recommends that the application be denied  
18 and this matter dismissed.

19                   In his complaint, plaintiff alleges that on June 29, 2004, he appeared before the Municipal  
20 Court of Mount Vernon, Washington, to face charges of shoplifting. (Proposed complaint at 3).  
21 Plaintiff further alleges that he was “drunk and high” at the time and, as a result, proceeded to yell  
22 at the presiding judge and courtroom guards. (*Id.*) Two days later, plaintiff asserts that, “out of  
23 nowhere,” he was charged with harassing a judge and threatening a police officer. (*Id.*) Plaintiff  
24 names as the sole defendants here two separate courts: the Municipal Court of Mount Vernon,  
25 where the offensive conduct occurred; and the Superior Court of Skagit County, where he was  
26 apparently convicted of charges stemming from the conduct. (*Id.* at 1, 2). For relief, plaintiff asks

01 that this court “dismiss all charges” and award him eight months of SSI compensation, which he  
 02 apparently has not received while he has been incarcerated. (*Id.* at 4).

03 While plaintiff’s complaint faces many potential obstacles, perhaps the most serious one  
 04 is the traditional immunity accorded judges.<sup>1</sup> “[T]he Supreme Court has determined that certain  
 05 government officials require *absolute immunity* from liability in order to enable them to function  
 06 independently and effectively, without fear of intimidation or harassment. Accordingly, the Court  
 07 has granted absolute immunity to the President, judges, prosecutors, witnesses, and officials  
 08 performing quasi-judicial functions, and legislators.” *Fry v. Melaragno*, 939 F.2d 832, 835-36 (9<sup>th</sup>  
 09 Cir. 1991), quoting *Mitchell v. Forsyth*, 472 U.S. 511, 520 (1985) (internal quotations omitted)  
 10 (emphasis added). Even if plaintiff were to allege that the judges in question had acted  
 11 “maliciously and corruptly,” such allegations would not be sufficient to strip away judicial  
 12 immunity, if the acts complained of were performed in a “judicial capacity.” See *Mireles v. Waco*,  
 13 502 U.S. 9, 11 (1991). Here, plaintiff has failed to show that the acts complained of were  
 14 performed in a non-judicial capacity; thus, he has failed to overcome the bar of judicial immunity.

15 Accordingly, plaintiff’s application for leave to proceed *in forma pauperis* should be  
 16 denied because the underlying complaint is barred by judicial immunity. A proposed Order  
 17 accompanies this Report and Recommendation.

18 DATED this 23rd day of May, 2005.

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 21 Mary Alice Theiler  
 22 United States Magistrate Judge  
 23

24       <sup>1</sup> The other potential barriers to this lawsuit are the rule which bars § 1983 actions if  
 25 success would necessarily imply the invalidity of a prior criminal conviction, *see Heck v.*  
*Humphrey*, 512 U.S. 477, 486-87 (1994) and the requirement that a prisoner exhaust his  
 26 administrative remedies before bringing an action pursuant to § 1983. *See Booth v. Churner*, 531  
 U.S. 956 (2001).